

**2009 DRAFTING REQUEST**

**Bill**

Received: **11/25/2008**

Received By: **rchampag**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - LRC**

By/Representing: **Don Dyke**

This file may be shown to any legislator: **NO**

Drafter: **rchampag**

May Contact:

Addl. Drafters:

Subject: **Employ Pub - civil service**

Extra Copies:

Submit via email: **YES**

Requester's email: **Don.Dyke@legis.wisconsin.gov**

Carbon copy (CC:) to:

---

**Pre Topic:**

No specific pre topic given

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**Topic:**

Remedial changes affecting WERC

---

**Instructions:**

See attached.

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	rchampag 11/26/2008	wjackson 12/10/2008	phenry 12/11/2008	_____	sbasford 12/11/2008		
/1	rchampag 10/23/2009	wjackson 10/26/2009	rschluet 10/26/2009	_____	mbarman 10/26/2009	mbarman 10/26/2009	

FE Sent For:

*None*

<END>

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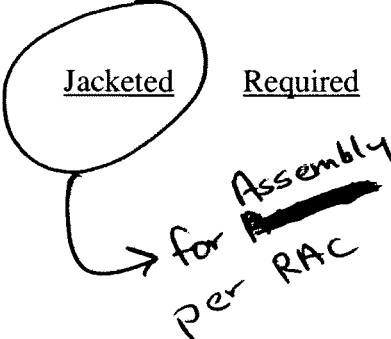
### Instructions:

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/1	rchampag 10/23/2009	wjackson 10/26/2009	rschluet 10/26/2009	_____	mbarman 10/26/2009		

  
for Assembly  
per RAC

FE Sent For:

<END>

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### Instructions:

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/?							
/P1	rchampag 11/26/2008	wjackson 12/10/2008	phenry 12/11/2008	_____	sbasford 12/11/2008		

FE Sent For:

1 WJ 12/26

<END>

Please jacket  
for  
Assembly

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By/Representing: **Don Dyke**

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Drafter: **rchampag**

May Contact:

Addl. Drafters:

Subject: **Employ Pub - civil service**

Extra Copies:

Submit via email: **YES**

Requester's email: **Don.Dyke@legis.wisconsin.gov**

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**Pre Topic:**

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**Topic:**

Remedial changes affecting WERC

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**Instructions:**

See attached.

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rchampag	/pl wlj 12/10	12/11 ph	12/11 ph			
FE Sent For:							
<END>							

Judith Neumann  
Chair  
Paul Gordon  
Commissioner  
Susan J. M. Bauman  
Commissioner



**Mailing Address**

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**State of Wisconsin  
Wisconsin Employment Relations Commission**

November 24, 2008

Law Revision Committee  
c/o Don Dyke  
Chief of Legal Services  
Joint Legislative Council  
P.O. Box 2536  
Madison, WI 53701-2536

Re: Minor substantive remedial statutory changes for the 2009-10 Session of the  
Legislature that will improve the administration of Sec. 230.44 and .45, Stats.

Dear Committee:

The Wisconsin Employment Relations Commission respectfully offers several proposed statutory revisions that we believe would be appropriate remedial legislation.

The overall goal of the Commission's proposed revisions is to correct errors arising from statutory revisions that were included in 2003 Wisconsin Act 33. The underlying purpose of the relevant 2003 revisions is summarized by the following language from LRB's analysis of 2003 Senate Bill 44. The bill was later enacted as 2003 Wisconsin Act 33.

Under current law, the Personnel Commission hears appeals of state employee position classification decisions, examination scores, appointment decisions, and disciplinary actions taken against employees by their employer (appeals functions). In addition, the Personnel Commission investigates complaints by state employees for discriminatory or retaliatory actions taken by their employers relating to the Fair Employment Act, public employee safety and health protections, the state's whistle-blower law, the Family and Medical Leave Act, elder abuse reporting contact protections, and health care worker reporting protections (complaints functions). *This bill abolishes the Personnel Commission and transfers its appeals functions to the Employment Relations Commission and its complaints functions to the Division of Equal Rights in DWD. (Emphasis added.)*

The Commission proposes the following four remedial measures relating to the responsibilities it acquired via 2003 Wisconsin Act 33. We estimate that all of the proposals would have no fiscal impact. None have been formally requested in previous sessions. We have provided a copy of our proposals to the Administrator of the Equal Rights Division and to the Department of Workforce Development's General Counsel. Both are in agreement with all of the proposals.

1. *Eliminate the confusing language in Sec. 230.44(3), Stats., relating to time limits.*

Any appeal filed under this section may not be heard unless the appeal is filed within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later, ~~except that if the appeals alleges discrimination under subch. II of ch. 111, the time limit for that part of the appeal alleging such discrimination shall be 300 days after the alleged discrimination occurred.~~

The deleted language refers to the filing period for Fair Employment Act complaints that are processed by the Equal Rights Division pursuant to Sec. 230.45(1e)(a) rather than by the WERC, and the statute should be changed to eliminate confusion. The Equal Rights Division lacks authority to process cases filed under Sec. 230.44.

2. *Revise Sec. 230.44(4)(b), Stats., to eliminate the confusing reference to a matter "investigated."*

An employee shall attend a hearing under this subsection and testify when requested to do so by the commission. Any person not under the civil service who appears before the commission by order shall receive for his or her attendance the fees and mileage provided for witnesses in civil actions in courts of record under ch. 855, which shall be audited and paid by the state in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the commission and charged to the proper appropriation for the commission. No witness subpoenaed at the insistence of a party other than the commission is entitled to compensation from the state for attendance or travel, unless the commission certifies that his or her testimony was relevant and material to the matter ~~investigated~~.

The WERC's authority under 230.45(1) does not encompass conducting investigations. The investigation responsibility rests with ERD as provided in 230.45(1e).

3. *Delete the reference to the Equal Rights Division in 230.45(1)(h).*

(1) The commission shall:

.....

(h) Keep minutes of its own proceedings and other official actions. All such records shall, subject to reasonable rules, be open to public inspection. Records of the director or the administrator which are confidential shall be kept confidential by ~~the division of equal rights or~~ the commission.

The paragraphs in subsection (1) should all relate to the Commission while the paragraphs in subsection (1e) should relate to ERD. In fact, paragraph (1e)(c) already requires ERD to keep these records confidential:

(1e) The division of equal rights shall:

.....

Keep minutes of its own proceedings and other official actions relating to this chapter. All such records shall, subject to reasonable rules, be open to public inspection. Records of the director or the administrator which are confidential shall be kept confidential by the division of equal rights.

The location of the reference to ERD in 230.45(1)(h) is illogical and it is duplicated substantively by 230.45(1e)(c).

4. *Delete Sec. 230.45(1)(e), Stats., which misleadingly refers to a Commission authority to hear county merit system appeals.*

(1) The commission shall:

.....

~~(e) Hear appeals, when authorized under county merit system rules under s. 49.78(4), from any interested party.~~

According to correspondence in 2004 from Howard Bernstein, Legal Counsel for DWD:

This is a reference to obsolete AFDC rules that have been repealed. It is actually the same provision as in the old sec. 230.45(1)(e) that applied to the Personnel Commission, except at that time the cross-reference was to sec. 49.33(4). The cross-reference was changed when sec. 49.33 was renumbered to 49.78 by 2003 Act 33 to reflect the transfer of income maintenance programs (food stamps and part of Medicaid) from DWD to DHFS.

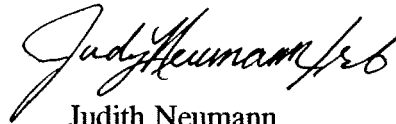
Counties no longer administer the AFDC program, which was phased out in 1997 as W-2 started up (see sec. 49.19(20)(a), Stats.). DWD repealed the rules, which had no application. You may also think that there is also no longer any need for sec. 49.19, Stats., sec. 49.78(4), Stats., and many other surviving but obsolete statutory references to the AFDC program. I think so too, and I have recommended to DHFS that DWD and DHFS should jointly introduce legislation to do the repeals. However, DHFS has been slow to agree, because they are concerned about possible effects on the Medicaid program.

Section 230.45(1)(e) should be deleted because it has been superseded and is, consequently, confusing.

Thank you for considering the proposed remedial changes that are set forth above. If you have any specific questions regarding the proposals, please feel to contact Kurt Stege, a staff attorney with the Commission, at 266-3299 or [kurt.stege@wisconsin.gov](mailto:kurt.stege@wisconsin.gov).

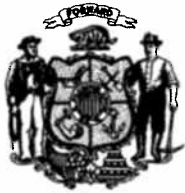
Very truly yours,

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A handwritten signature in cursive script, appearing to read "Judith Neumann".

Judith Neumann  
Chair





State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-0938/P1

RAC:.....

Wlj

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- gen. cat.

1 AN ACT ...; **relating to:** remedial statutory changes affecting the Wisconsin  
2 Employment Relations Commission (suggested as remedial legislation by the  
3 Wisconsin Employment Relations Commission).

---

*Analysis by the Legislative Reference Bureau*

(CS) This bill is explained in the Notes provided by the Law Revision Committee of the Joint Legislative Council.

---

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

LAW REVISION COMMITTEE PREFATORY NOTE: This bill is a remedial legislation proposal, requested by the Wisconsin Employment Relations Commission and introduced by the Law Revision Committee under s. 13.83 (1) (c) 4. and 5., stats. After careful consideration of the various provisions of the bill, the Law Revision Committee has determined that this bill makes minor substantive changes in the statutes, and that these changes are desirable as a matter of public policy.

4 SECTION 1. 230.44 (3) of the statutes is amended to read:  
5 230.44 (3) TIME LIMITS. Any appeal filed under this section may not be heard  
6 unless the appeal is filed within 30 days after the effective date of the action, or

1 within 30 days after the appellant is notified of the action, whichever is later, ~~except~~  
2 ~~that if the appeal alleges discrimination under subch. II of ch. 111, the time limit for~~  
3 ~~that part of the appeal alleging such discrimination shall be 300 days after the~~  
4 ~~alleged discrimination occurred.~~ ✓

History: 1977 c. 196; 1979 c. 221; 1981 c. 140; 1983 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 307; 1999 a. 102; 2003 a. 33.

5 **SECTION 2.** 230.44 (4) (b) of the statutes is amended to read:

6 230.44 (4) (b) An employee shall attend a hearing under this subsection and  
7 testify when requested to do so by the commission. Any person not under the civil  
8 service who appears before the commission by order shall receive for his or her  
9 attendance the fees and mileage provided for witnesses in civil actions in courts of  
10 record under ch. 885, which shall be audited and paid by the state in the same  
11 manner as other expenses are audited and paid, upon the presentation of properly  
12 verified vouchers approved by the commission and charged to the proper  
13 appropriation for the commission. No witness subpoenaed at the insistence of a  
14 party other than the commission is entitled to compensation from the state for  
15 attendance or travel, unless the commission certifies that his or her testimony was  
16 relevant and material to the matter investigated.

History: 1977 c. 196; 1979 c. 221; 1981 c. 140; 1983 a. 27; 1989 a. 31; 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 307; 1999 a. 102; 2003 a. 33.

17 **SECTION 3.** 230.45 (1) (e) of the statutes is repealed.

18 **SECTION 4.** 230.45 (1) (h) ✓ of the statutes is amended to read:

19 230.45 (1) (h) Keep minutes of its own proceedings and other official actions.  
20 All such records shall, subject to reasonable rules, be open to public inspection.  
21 Records of the director or the administrator which are confidential shall be kept  
22 confidential by the ~~division of equal rights or the commission.~~ ✓

History: 1977 c. 196; 1979 c. 221; 1981 c. 334 s. 25 (2); 1981 c. 360; 1983 a. 27, 398, 409; 1987 a. 140, 331; 1987 a. 403 s. 256; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16; 1995 a. 27; 1997 a. 131, 216; 1999 a. 176; 2001 a. 26, 38; 2003 a. 33; 2005 a. 25.

23 **SECTION 5.** 230.45 (3) ✓ of the statutes is amended to read:

1           230.45 (3) The commission shall promulgate rules establishing a schedule of  
2       filing fees to be paid by any person who files an appeal under sub. (1) (c) ~~or (e)~~ <sup>✓</sup> or s.  
3       230.44 (1) (a) or (b) with the commission on or after the effective date of the rules  
4       promulgated under this subsection. Fees paid under this subsection shall be credited  
5       to the appropriation account under s. 20.425 (1) (i).

**History:** 1977 c. 196; 1979 c. 221; 1981 c. 334 s. 25 (2); 1981 c. 360; 1983 a. 27, 398, 409; 1987 a. 140, 331; 1987 a. 403 s. 256; 1989 a. 56 s. 259; 1991 a. 39; 1993 a. 16;  
1995 a. 27; 1997 a. 131, 216; 1999 a. 176; 2001 a. 26, 38; 2003 a. 33; 2005 a. 25.

6

(END)

## PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to repeal* 230.45 (1) (e); and *to amend* 230.44 (3), 230.44 (4) (b), 230.45  
2 (1) (h) and 230.45 (3) of the statutes; **relating to:** remedial statutory changes  
3 affecting the Wisconsin Employment Relations Commission (suggested as  
4 remedial legislation by the Wisconsin Employment Relations Commission).

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***Analysis by the Legislative Reference Bureau***

This bill is explained in the NOTES provided by the Law Revision Committee of  
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consideration of the various provisions of the bill, the Law Revision Committee has  
determined that this bill makes minor substantive changes in the statutes, and that these  
changes are desirable as a matter of public policy.

5 **SECTION 1.** 230.44 (3) of the statutes is amended to read:  
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2 ~~that if the appeal alleges discrimination under subch. II of ch. 111, the time limit for~~  
3 ~~that part of the appeal alleging such discrimination shall be 300 days after the~~  
4 ~~alleged discrimination occurred.~~

5 ~~SECTION 2. 230.44 (4) (b) of the statutes is amended to read:~~  
*insert A*

6 230.44 (4) (b) An employee shall attend a hearing under this subsection and  
7 testify when requested to do so by the commission. Any person not under the civil  
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14 party other than the commission is entitled to compensation from the state for  
15 attendance or travel, unless the commission certifies that his or her testimony was  
16 relevant and material to the matter investigated.

17 ~~SECTION 3. 230.45 (1) (e) of the statutes is repealed.~~  
*insert B*

18 ~~SECTION 4. 230.45 (1) (h) of the statutes is amended to read:~~  
*insert C*

19 230.45 (1) (h) Keep minutes of its own proceedings and other official actions.  
20 All such records shall, subject to reasonable rules, be open to public inspection.  
21 Records of the director or the administrator which are confidential shall be kept  
22 confidential by the ~~division of equal rights or the commission.~~

23 ~~SECTION 5. 230.45 (3) of the statutes is amended to read:~~  
*insert D*

24 230.45 (3) The commission shall promulgate rules establishing a schedule of  
25 filing fees to be paid by any person who files an appeal under sub. (1) (c) ~~or (e)~~ or s.

1 230.44 (1) (a) or (b) with the commission on or after the effective date of the rules  
2 promulgated under this subsection. Fees paid under this subsection shall be credited  
3 to the appropriation account under s. 20.425 (1) (i).

4 (END)



insert E



State of Wisconsin  
2009 - 2010 LEGISLATURE

LRB-0938/P1

RAC:wlj:ph

Stays RMR

Tued

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS: Please  
create and  
use 1 Auto-ref.

- gen. cat

- 1 AN ACT *to repeal* 230.45 (1) (e); and *to amend* 230.44 (3), 230.44 (4) (b), 230.45  
2 (1) (h) and 230.45 (3) of the statutes; **relating to:** remedial statutory changes  
3 affecting the Wisconsin Employment Relations Commission (suggested as  
4 remedial legislation by the Wisconsin Employment Relations Commission).

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non-substantive

Non-Sub

1 within 30 days after the appellant is notified of the action, whichever is later, ~~except~~  
2 ~~that if the appeal alleges discrimination under subch. II of ch. 111, the time limit for~~  
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6 230.44 (4) (b) An employee shall attend a hearing under this subsection and  
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21 Records of the director or the administrator which are confidential shall be kept  
22 confidential by the ~~division of equal rights or the~~ commission.

23 **SECTION 5.** 230.45 (3) of the statutes is amended to read:

24 230.45 (3) The commission shall promulgate rules establishing a schedule of  
25 filing fees to be paid by any person who files an appeal under sub. (1) (c) ~~or (e)~~ or s.



- 1 230.44 (1) (a) or (b) with the commission on or after the effective date of the rules
- 2 promulgated under this subsection. Fees paid under this subsection shall be credited
- 3 to the appropriation account under s. 20.425 (1) (i).

4

(END)



Insert E ↓

231m\_inserts del

LRB-0938/1 – INSERT A

NOTE: Eliminates language relating to the filing period for fair employment act complaints.

<sup>5</sup>  
These complaints are processed by the Equal Rights Division (in the Department of Workforce Development) under s. 230.45 (1e) (a), ~~Stats.~~ <sup>and</sup> not under this subsection, which deals with time <sup>for</sup> appeals to the Wisconsin Employment Relations Commission (WERC). The placement of this unrelated provision in s. 230.44 (3), ~~Stats.~~, is unnecessary and confusing.

INSERT B

NOTE: The authority of WERC under s. 230.45 (1), ~~Stats.~~, does not include conducting investigations; the Equal Rights Division conducts investigations under s. 230.45 (1e), ~~Stats.~~. Therefore, reference to the matter “investigated” is deleted.

INSERT C

NOTE: Repeals an obsolete provision regarding <sup>Families</sup> ~~the~~ WERC’s authority to hear county merit system appeals. The referenced rules are Aid to ~~family~~ with Dependent Children (AFDC) rules that have been repealed.

INSERT D

NOTE: Removes reference to the Division of Equal Rights. The duties of the Division of Equal Rights in this regard are stated in s. 230.45 (1e) (c), ~~Stats.~~

INSERT E

NOTE: Makes a cross-reference change to reflect the repeal of par. (e) of s. 230.45 (1), ~~Stats.~~, by <sup>AR 3</sup> SECTION 3 of the bill.

LPS: These will need to be typed w/ proper component formatting. Thanks.

update Note: Stand

and delete

**Barman, Mike**

---

**From:** Dyke, Don  
**Sent:** Tuesday, October 27, 2009 8:57 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-0938/1 Topic: Remedial changes affecting WERC

Please Jacket LRB 09-0938/1 for the ASSEMBLY.

Thanks,  
Don Dyke